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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ALL NIPPON AIRWAYS COMPANY, LTD.)	Case No C07-03422 EDL
14)	
15 Plaintiff,)	DEFENDANT UNITED AIR LINES,
16)	INC.'S MOTION FOR
17 vs)	ADMINISTRATIVE RELIEF TO
18)	STRIKE PLAINTIFF ALL NIPPON
19)	AIRWAYS COMPANY, LTD.'S
20)	MOTION TO COMPEL DISCOVERY
UNITED AIR LINES, INC ,)	OR FOR AN ORDER EXTENDING
21)	RESPONSE DATE
22)	
23 Defendant.)	DATE: N/A
24)	TIME: N/A
25)	CTRM: San Francisco
26)	JUDGE: Elizabeth D. Laporte

21 Defendant United Air Lines, Inc., ("United") by and through its attorneys, Jaffe, Raitt, Heuer
 22 & Weiss, P.C , hereby moves this Court for an order pursuant to Civil L R 7-11 striking Plaintiff
 23 All Nippon Airways Company, LTD 's ("ANA") Motion to Compel Discovery for failure to comply
 24 with the requirements of Civil L.R 37-2. In the alternative, United requests that the Court enter an
 25 order under Civil L.R. 6-3 granting United an extension of time to file its opposition to United's
 26 Motion to Compel. In support of this Motion, United relies upon the Declaration of Scott Torpey,
 27 attached as Exhibit 1, and states the following:
 28

1 1. On February 1, 2008, ANA filed a Notice of Motion and Motion to Compel
2 Discovery, by which it sought an order compelling United to produce additional documents
3 responsive to ANA's First set of Document Requests to UAL, ANA's Second Set of Document
4 Requests to UAL and ANA's Document Requests attached to Notices of Deposition (Doc. No. 58).

5 2. ANA contends in its Motion that it is entitled to an order requiring the production of
6 additional documents responsive to 149 of the requests contained in its First and Second Sets of
7 Document Requests to UAL and the deposition notice requests, as follows:

- 8 a First Set of Document Requests: Nos. 1-7, 9-11, 13-42;
- 9 b Second Set of Document Requests: Nos. 1-10, 12, 13, 15-21, 30;
- 10 c Dep. Notice, John Rediger: All 19 requests;
- 11 d Dep. Notice, Scott Russell: All 19 requests;
- 12 e Dep. Notice, Brad Powell: All 19 requests;
- 13 f Dep. Notice, Edward Loh: All 18 requests;
- 14 g Dep. Notice, Julio Hernandez: All 15 requests.

15 3 Civil L.R. 37-2 sets forth the requirements for a motion to compel. Under this rule,
16 the moving party must state in the motion the entire text of each discovery request at issue, along
17 with the complete text of the opposing party's response/objection:

18
19 In addition to complying with the applicable provisions of Civil L.R. 7, a
20 **motion to compel further responses to discovery requests must set forth**
21 **each request in full, followed immediately by the objections and/or**
22 **responses thereto.** For each such request, the moving papers must detail
23 the basis for the party's contention that it is entitled to the requested
24 discovery and must show how the proportionality and other requirements of
25 FRCP 26(b)(2) are satisfied.

26 Civil L.R. 37-2 (emphasis added).

27 4. ANA set forth the complete text and answer/objection for only 2 of the 149 requests
28 addressed in its motion, in clear violation of the requirements of Civil L.R. 37-2. As the language of
the rule makes clear, the obligation to set out the complete text and answer/objection for each
discovery request is mandatory, and ANA did not seek permission from the Court to deviate from

1 this requirement. ANA's procedurally improper motion should be stricken based upon its failure to
2 comply with Rule 37-2. This is not just a matter of form, but of substance. The requirement to set
3 out the full text of the request and response prevents the moving party from misrepresenting his
4 opponent's response, forces the movant to state the basis for its request for additional production
5 with specificity and reduces the burden on the Court and the opposing party by placing all of the
6 matters at issue in one document. ANA has unduly burdened both United and this Court by seeking
7 to compel additional responses to 149 requests contained in eight different sets of discovery. Its
8 failure to comply with the requirements of Civil L.R. 37-2 has added to that burden.

9 5. Civil L.R. 7-11 provides an avenue for a party to seek relief "with respect to
10 miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local
11 rule or standing order of the assigned judge." Motions falling under this rule include "matters such
12 as motions to exceed otherwise applicable page limitations or motion to file documents under seal,
13 for example." Civil L.R. 7-11. There is no federal rule or statute, local rule, or standing order of
14 this Court providing a mechanism for striking a procedurally improper motion to compel.
15 Therefore, United's motion falls within the parameters of Civil L.R. 7-11 and is properly brought
16 under this provision.

17 6. Based upon ANA's failure to comply with the requirements of Civil L.R. 37-2,
18 United respectfully requests that the Court enter an order pursuant to Civil L.R. 7-11 striking ANA's
19 Motion to Compel from the docket. Entry of such an order will not only foster observance of the
20 local rules, but will also give the parties additional time to narrow the issues. In this regard, as to the
21 items ANA raised in the January 23 and 24, 2008 meet and confer, the process was working until
22 ANA short-circuited it by filing its Motion to Compel, as is shown by the January 30, 2008 letter of
23 Scott D. Cunningham, co-counsel for ANA, attached as Exhibit I to the Declaration of Marshall S.
24 Turner in Support of Motion of All Nippon Airways Company, Ltd. to Compel Discovery.
25 (Declaration of Scott Torpey, ¶ 3; Doc. No. 58-11) As indicated in the letter, following the meet
26 and confer, United agreed to produce additional materials related to the Standard Ground Handling
27 Agreement, employment files, the urine sample for Edward Loh, and a flight plan for the subject
28

1 flight. (Declaration of Scott Torpey, ¶ 3). ANA inexplicably filed its Motion to Compel only two
2 days after United received the letter from Mr. Cunningham memorializing the parties' agreement.
3 (Declaration of Scott Torpey, ¶ 3).

4 6. Furthermore, ANA did not raise the vast majority of the requests addressed in its
5 Motion to Compel in the meet and confer process. Thus, in addition to failing to comply with Civil
6 L.R. 37-2, ANA has failed to satisfy the meet and confer requirements of Fed. R. Civ. P. 37(a)(1)
7 and Civil L.R. 1-5(n) and 37-1. The parties may well have worked out additional issues if ANA had
8 not rushed into Court with its Motion to Compel. The meet and confer process should be continued
9 so that the issues can be discussed and further narrowed without the necessity for Court intervention
10 (Declaration of Scott Torpey, ¶ 3).

11 7. In the alternative, if the Court is not inclined to strike ANA's Motion, United
12 requests that the Court enter an order pursuant to Civil L.R. 6-3 granting ANA an additional
13 fourteen days, or, until March 4, 2008, to file its opposition to the Motion. ANA has filed an
14 extremely burdensome motion involving 149 document requests. It has compounded that burden by
15 failing to comply with the requirements of Civil L.R. 37-2 and by failing to satisfy its meet and
16 confer obligation. In order to compile the necessary information to adequately respond and draft its
17 opposition papers, United will need additional time, as explained in the attached Declaration of Scott
18 Torpey, ¶ 4. Considering ANA's violation of the rules, fairness dictates that United be granted an
19 extension.

20 WHEREFORE, United respectfully requests that this Court enter an order striking ANA's
21 Motion to Compel (see proposed order attached as Exhibit 2) or, alternatively, that the Court grant
22 ANA an additional fourteen days, or until March 4, 2008, to file its opposition to the Motion.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALL NIPPON AIRWAYS COMPANY,
LTD.,

Plaintiff/Counter Defendant,

vs.

UNITED AIR LINES, INC.,

Defendant/Counter-Plaintiff.

Case No. 07-03422 EDL

**DEFENDANT UNITED AIR LINES, INC.'S
(UAL) CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2008 I electronically filed the foregoing papers with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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-1-

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Dated: February 12, 2008

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